

COMMITTEE SUBSTITUTE

FOR

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FOR

**Senate Bill No. 109**

(By Senators Blair and Leonhardt)

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[Originating in the Committee on the Judiciary;  
reported February 20, 2015.]

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A BILL to amend and reenact §16-2-11 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §16-2-16, all relating to local indoor smoking prohibition; exempting certain veterans' organizations from local indoor smoking prohibition; and establishing a procedure for certain establishments to apply for

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exemption from local indoor smoking prohibition.

*Be it enacted by the Legislature of West Virginia:*

That §16-2-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §16-2-16, all to read as follows:

**ARTICLE 2. LOCAL BOARDS OF HEALTH.**

**§16-2-11. Local board of health; powers and duties; exemption of veterans' organizations and active duty United States Military organizations from indoor smoking regulations.**

1           (a) Each local board of health created, established and  
2 operated pursuant to the provisions of this article shall:

3           (1) Provide the following basic public health services  
4 and programs in accordance with state public health

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1 performance-based standards:

2           (A) Community health promotion, including assessing  
3 and reporting community health needs to improve health  
4 status, facilitating community partnerships, including  
5 identifying the community's priority health needs,  
6 mobilization of a community around identified priorities and  
7 monitoring the progress of community health education  
8 services;

9           (B) Environmental health protection, including the  
10 promoting and maintaining of clean and safe air, water, food  
11 and facilities and the administering of public health laws, as  
12 specified by the commissioner, as to general sanitation, the  
13 sanitation of public drinking water, sewage and wastewater,  
14 food and milk and the sanitation of housing, institutions and  
15 recreation; and

16           (C) Communicable or reportable disease prevention

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1 and control, including disease surveillance, case investigation  
2 and follow-up, outbreak investigation, response to epidemics  
3 and prevention and control of rabies, sexually transmitted  
4 diseases, vaccine preventable diseases, HIV/AIDS,  
5 tuberculosis and other communicable and reportable diseases;

6 (2) Appoint a local health officer to serve at the will  
7 and pleasure of the local board of health, with approval of the  
8 commissioner;

9 (3) Submit a general plan of operation to the  
10 commissioner for approval if it receives any state or federal  
11 money for health purposes. This program plan shall be  
12 submitted annually and comply with provisions of the local  
13 board of health standards administrative rule;

14 (4) Provide equipment and facilities for the local  
15 health department that are in compliance with federal and  
16 state law;

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1           (5) Permit the commissioner to act by and through it,  
2 as needed. The commissioner may enforce all public health  
3 laws of this state, the rules and orders of the secretary, any  
4 county commission orders or municipal ordinances of the  
5 board's service area relating to public health and the rules and  
6 orders of the local board within the service area of a local  
7 board. The commissioner may enforce these laws, rules and  
8 orders when, in the opinion of the commissioner, a public  
9 health emergency exists or when the local board fails or  
10 refuses to enforce public health laws and rules necessary to  
11 prevent and control the spread of a communicable or  
12 reportable disease dangerous to the public health. The  
13 expenses incurred shall be charged against the counties or  
14 municipalities concerned;

15           (6) Deposit all moneys and collected fees into an  
16 account designated for local board of health purposes. The

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1 moneys for a municipal board of health shall be deposited  
2 with the municipal treasury in the service area. The moneys  
3 for a county board of health shall be deposited with the  
4 county treasury in the service area. The moneys for a  
5 combined local board of health shall be deposited in an  
6 account as designated in the plan of combination: *Provided,*  
7 That nothing contained in this subsection is intended to  
8 conflict with the provisions of article one of this chapter;

9           (7) Submit vouchers or other instruments approved by  
10 the board and signed by the local health officer or designated  
11 representative to the county or municipal treasurer for  
12 payment of necessary and reasonable expenditures from the  
13 county or municipal public health funds: *Provided,* That a  
14 combined local board of health shall draw upon its public  
15 health funds account in the manner designated in the plan of  
16 combination;

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1           (8) Participate in audits, be in compliance with tax  
2 procedures required by the state and annually develop a  
3 budget for the next fiscal year;

4           (9) Perform public health duties assigned by order of  
5 a county commission or by municipal ordinance consistent  
6 with state public health laws; and

7           (10) Enforce the public health laws of this state and  
8 any other laws of this state applicable to the local board.

9           (b) Each local board of health created, established and  
10 operated pursuant to the provisions of this article may:

11           (1) Provide primary care services, clinical and  
12 categorical programs, and enhanced public health services;

13           (2) Employ or contract with any technical,  
14 administrative, clerical or other persons to serve as needed  
15 and at the will and pleasure of the local board of health. Staff  
16 and any contractors providing services to the board shall

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1 comply with applicable West Virginia certification and  
2 licensure requirements. Eligible staff employed by the board  
3 shall be covered by the rules of the Division of Personnel,  
4 under section six, article ten, chapter twenty-nine of this code.  
5 However, any local board of health may, in the alternative  
6 and with the consent and approval of the appointing authority,  
7 establish and adopt a merit system for its eligible employees.  
8 The merit system may be similar to the state merit system and  
9 may be established by the local board by its order, subject to  
10 the approval of the appointing authority, adopting and making  
11 applicable to the local health department all, or any portion,  
12 of any order, rule, standard or compensation rate in effect in  
13 the state merit system as may be desired and as is properly  
14 applicable;

15           (3) ~~Adopt, and promulgate and from time to time~~  
16 propose and amend rules consistent with state public health



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1 laws and the rules of the West Virginia State Department of  
2 Health and Human Resources that are necessary and proper  
3 for the protection of the general health of the service area and  
4 the prevention of the introduction, propagation and spread of  
5 disease. All rules shall be filed with the clerk of the county  
6 commission, or the clerk or the recorder of the municipality,  
7 or both, and shall be kept by the clerk or recording officer in  
8 a separate book as public records;

9           (4) Accept, receive and receipt for money or property  
10 from any federal, state or local governmental agency, from  
11 any other public source or from any private source to be used  
12 for public health purposes or for the establishment or  
13 construction of public health facilities;

14           (5) Assess, charge and collect fees for permits and  
15 licenses for the provision of public health services: *Provided,*  
16 That permits and licenses required for agricultural activities

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1 may not be assessed, charged or collected: *Provided,*  
2 *however,* That a local board of health may assess, charge and  
3 collect all of the expenses of inspection of the physical plant  
4 and facilities of any distributor, producer or pasteurizer of  
5 milk whose milk distribution, production or pasteurization  
6 facilities are located outside this state, but who sells or  
7 distributes in the state, or transports, causes or permits to be  
8 transported into this state, milk or milk products for resale,  
9 use or consumption in the state and in the service area of the  
10 local board of health. A local board of health may not assess,  
11 charge and collect the expenses of inspection if the physical  
12 plant and facilities are regularly inspected by another agency  
13 of this state or its governmental subdivisions, or by an agency  
14 of another state or its governmental subdivisions certified as  
15 an approved inspection agency by the commissioner. No  
16 more than one local board of health may act as the regular

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1 inspection agency of the physical plant and facilities; when  
2 two or more include an inspection of the physical plant and  
3 facilities in a regular schedule, the commissioner shall  
4 designate one as the regular inspection agency;

5       (6) Assess, charge and collect fees for services  
6 provided by the local health department: *Provided*, That fees  
7 for services shall be submitted to and approved by the  
8 commissioner;

9       (7) Contract for payment with any municipality,  
10 county or board of education for the provision of local health  
11 services or for the use of public health facilities. Any contract  
12 shall be in writing and permit provision of services or use of  
13 facilities for a period not to exceed one fiscal year. The  
14 written contract may include provisions for annual renewal by  
15 agreement of the parties; and

16       (8) Retain and make available child safety car seats,

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1 collect rental and security deposit fees for the expenses of  
2 retaining and making available child safety car seats, and  
3 conduct public education activities concerning the use and  
4 preventing the misuse of child safety car seats: *Provided,*  
5 That this subsection is not intended to conflict with the  
6 provisions of section forty-six, article fifteen, chapter  
7 seventeen-c of this code: *Provided, however,* That any local  
8 board of health offering a child safety car seat program or  
9 employee or agent of a local board of health is immune from  
10 civil or criminal liability in any action relating to the  
11 improper use, malfunction or inadequate maintenance of the  
12 child safety car seat and in any action relating to the improper  
13 placement, maintenance or securing of a child in a child  
14 safety car seat.

15 (c) The local boards of health are charged with  
16 protecting the health and safety, as well as promoting the

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1 interests, of the citizens of West Virginia. All state funds  
2 appropriated by the Legislature for the benefit of local boards  
3 of health shall be used for provision of basic public health  
4 services.

5       (d) Notwithstanding any other provision of this article,  
6 a veterans' organization that is exempt from federal income  
7 tax under section 501(c)(19) of the Internal Revenue Code is  
8 exempt from rules restricting smoking in indoor spaces  
9 which are adopted, promulgated or enforced by local boards  
10 of health.

11 **§16-2-16. Procedure for exempting certain establishments**  
12 **from local smoking prohibition;**  
13 **timelines.**

14       (a) For the purposes of this section, “smoking” means  
15 inhaling, exhaling, burning or carrying any lighted cigar,  
16 cigarette, pipe or other lighted smoking device for burning

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1 tobacco or any other plant. “Smoking” does not include the  
2 burning of incense in a religious ceremony.

3 (b) An establishment may be exempted from the local  
4 smoking prohibitions if it meets the following requirements:

5 (1) The establishment is: (A) A pari-mutuel racing  
6 facility or a licensed racetrack, as both are defined in section  
7 three, article twenty-two-a, chapter twenty-nine of this code;  
8 (B) a restricted access adult-only facility, as that term is  
9 defined in section three hundred twenty-eight, article twenty-  
10 two-b, chapter twenty-nine of this code; (C) a fraternal  
11 beneficiary society that is exempt from federal income tax  
12 under section 501(c)(8) of the Internal Revenue Code of  
13 1986, as amended; or (D) a domestic fraternal society that is  
14 exempt from federal income tax under section 501(c)(10) of  
15 the Internal Revenue Code;

16 (2) The establishment has a permanent ventilation

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1 system that ensures a minimum air exchange of six times per  
2 hour through out the indoor space and a minimum air  
3 exchange of twelve times per hour in the indoor space that  
4 serves food, unless the food space is designated nonsmoking;

5       (3) The smoking area will be restricted to persons  
6 twenty-one years of age or older; and

7       (4) At least ten percent of the indoor space of the area  
8 will be designated a nonsmoking area.

9       (c) If an establishment meets the requirements set  
10 forth in subsection (b) of this section, then the establishment  
11 may request an exemption from the local board of health  
12 where the establishment is located by submitting a written  
13 request to the local board of health. The local board of health  
14 shall review the request for an exemption and determine if the  
15 requirements set forth in subsection (b) of this section were  
16 met. Within thirty days of the receipt of the request for an

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1 exemption, the local board of health shall submit a certificate  
2 of finding to the county commission of the county where the  
3 local board of health is located.

4           (d) Within thirty days of the receipt of the certificate  
5 of finding, the county commission may review and vote on  
6 the request for an exemption in a regular or special session.